

UNITED STATES DISTRICT COURT

## DISTRICT OF NEVADA

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LANE CHARLIE TOM,

Case No. 3:24-cv-00396-MMD-CLB

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**Petitioner,**

## ORDER

JOHN HENLEY, *et al.*

## Respondents.

## I. SUMMARY

12 Petitioner Lane Charlie Tom filed a *pro se* petition for writ of habeas corpus under  
13 28 U.S.C. § 2254. (ECF No. 1-1 (“Petition”).) The Court issued an order to show cause  
14 directing Petitioner to demonstrate why this matter should not be dismissed as untimely.  
15 (ECF No. 5 (“OSC”).) The Court now reviews Tom’s response (ECF No. 6) to the OSC.  
16 The Court is inclined to appoint counsel, *sua sponte*, finding that appointment of counsel  
17 is in the interests of justice considering the lengthy sentence structure, the relatively  
18 complex potential issues related to equitable tolling, and the myriad of potential  
19 procedural obstacles presented under the circumstances. The Court will give Tom 30  
20 days to file an objection to the appointment of counsel; otherwise, the Court will  
21 provisionally appoint counsel to undertake direct representation of Tom.

## II. BACKGROUND

## A. State Court Proceedings

24 Tom challenges his confinement for conviction and sentence imposed by the Sixth  
25 Judicial District Court for Humboldt County, Nevada.<sup>1</sup> On April 23, 2014, the state court  
26 entered a judgment of conviction for sexual assault with substantial bodily harm and first-

27                   <sup>1</sup>The Court takes judicial notice of the online docket records of the Sixth Judicial  
28 District Court and Nevada appellate courts. The docket records may be accessed by the  
public online at <http://caseinfo.nvsupremecourt.us/public/caseSearch.do>.

1 degree kidnapping with substantial bodily harm. The state court sentenced Tom to an  
2 aggregated sentence of 25 years to life imprisonment. On January 14, 2015, the Nevada  
3 Supreme Court affirmed Tom's convictions on direct appeal. On February 1, 2016, Tom  
4 filed a state habeas petition seeking post-conviction relief. The state court denied his  
5 petition, and on April 16, 2020, the Nevada Supreme Court affirmed denial of relief.  
6 Remittitur issued on May 11, 2020.

7 **B. Prior Federal Proceeding**

8 On February 2, 2022, Tom initiated a federal proceeding in this District in Case No.  
9 3:22-cv-00061-MMD-CLB by filing a handwritten document stating that he was seeking  
10 rehearing under Fed. R. Civ. P. 60(b). He failed to pay the filing fee and apply for leave  
11 to proceed *in forma pauperis* ("IFP"). When he mailed the documents initiating that  
12 proceeding, he was housed in Lovelock Correctional Center ("LCC").

13 On February 18, 2022, the Court ordered Tom to pay the filing fee or submit an  
14 IFP application and directed that if Tom wished to pursue a habeas case, he must file a  
15 petition for writ of habeas corpus on the § 2254 form within 45 days of the date of the  
16 order; otherwise, the case would be dismissed without prejudice. The Court ordered the  
17 Clerk of Court to serve Tom with the appropriate forms and instructions and copies of the  
18 order. The Clerk of Court attempted to serve the order and accompanying forms and  
19 instructions on Tom at LCC. On February 22, 2022, the Court was notified that the  
20 February 18, 2022, order, and accompanying documents were undeliverable because  
21 Tom had been moved to Warm Springs Correctional Center ("WSCC").

22 On April 13, 2022, the Court issued an order directing Tom to comply with the  
23 requirements of the February 18, 2022, order not later than May 31, 2022, and to file a  
24 notice of change of address no later than May 13, 2022; otherwise, the case would be  
25 dismissed without prejudice and without further advance notice. The April 13, 2022, order  
26 also directed the Clerk of Court to resend to Tom, at WSCC, the February 18, 2022, order,  
27 and accompanying documents, along with the April 13, 2022, order. Service was instead  
28 attempted at LCC. On April 13, 2022, the Court received notice that service was

1 undeliverable because Tom was housed at WSCC. No attempt was made to serve Tom  
2 at WSCC. Tom did not comply with either the February 18 or April 13, 2022, orders.

3 On June 2, 2022, the Court dismissed the case because Tom failed to comply with  
4 the Court's February 18 and April 13, 2022, orders. The Clerk of Court attempted to serve  
5 the June 2, 2022, dismissal order on Tom at LCC. The Court received prompt notice that  
6 it was undeliverable because Tom was moved to Northern Nevada Correctional Center  
7 ("NNCC"). That same day, however, Tom refiled the same motion for rehearing that he  
8 filed when he initiated that case.

9 Almost two years later, on May 13, 2024, Tom filed an IFP application and a notice  
10 of change of address explaining that his delay was due to being "repeatedly transferred  
11 and . . . totally disoriented." The next day, the Court denied the IFP application, declined  
12 to reopen that action given Tom's inaction for nearly two years and his failure to file a  
13 petition, and stated that if Tom desires to pursue federal habeas relief, he must file a new  
14 case with a habeas petition and a new motion to proceed IFP.

15 **C. Current Federal Proceeding**

16 On September 3, 2024, Tom initiated the present action by filing an IFP application  
17 and a federal petition for writ of habeas corpus on the proper form, alleging ineffective  
18 assistance of trial and appellate counsel. (ECF Nos. 1; 1-1.) The Petition states Tom was  
19 then housed at NNCC. (*Id.* at 11.) On October 22, 2024, the Court granted the IFP  
20 application and ordered Tom to show cause why his Petition should not be dismissed as  
21 untimely. (ECF No. 5.) Tom timely filed a response to the OSC, which includes notice that  
22 he has returned to LCC. (ECF No. 6.)

23 **III. DISCUSSION**

24 In the OSC, the Court explained that the AEDPA clock for Tom's federal petition  
25 expired on July 24, 2020. (ECF No. 5 at 3.) It appears that Tom's first attempt to file a  
26 federal petition in Case No. 3:22-cv-00061-MMD-CLB, was made on February 2, 2022.  
27 Tom's second attempt, in the present case, was made on September 3, 2024. Absent  
28 another basis for tolling or delayed accrual, both of Tom's attempts to file a petition were

1 made after the AEDPA limitations period expired.

2       In his response to the OSC, Tom asserts that he failed to timely file the Petition  
3 because he had no counsel, did not know what to do or how to proceed, was “mentally  
4 disoriented,” and he requests the Court consider excusable delay under the Federal  
5 Rules of Civil Procedure. (ECF No. 6 at 2-3.) He claims that he failed to timely comply  
6 with the Court’s orders because he was repeatedly moved “beginning at LCC (Lovelock),  
7 to WSCC (Warm Springs), then to NNCC, then back to LCC, back to NNCC, now again  
8 back to LLC” where he is housed in “close-custody” i.e., administrative segregation. (ECF  
9 No. 6 at 2.) Although Tom’s Petition is untimely, he arguably requests a finding that  
10 equitable tolling is warranted. See *Holland v. Florida*, 560 U.S. 631, 649 (2010).

11       Upon review of the totality of the circumstances presented here, the Court is  
12 inclined to appoint counsel, *sua sponte*, to represent Tom, finding it is in the interests of  
13 justice considering the lengthy sentence structure, the relatively complex issues related  
14 to equitable tolling, and the myriad of potential procedural obstacles that Tom’s situation  
15 presents. Before the Court appoints counsel, however, Tom will have 30 days from the  
16 date of entry of this order to file an objection to the appointment of counsel to represent  
17 him in this habeas matter. If Tom does not file an objection within 30 days from the date  
18 of entry of this order, the Court will provisionally appoint the Federal Public Defender  
19 (“FPD”) as counsel to undertake direct representation of Tom. If the FPD is unable to  
20 represent Tom, the Court will appoint alternate counsel. Appointed counsel will represent  
21 Tom in all federal proceedings related to this matter, including any appeals or certiorari  
22 proceedings, unless allowed to withdraw.

23 **IV. CONCLUSION**

24       It is therefore ordered that Petitioner has satisfied the OSC (ECF No. 5) to the  
25 limited extent set forth in this order.

26       The Clerk of Court is directed to file the Petition (ECF No. 1-1).

27       It is further ordered that the Court will provisionally appoint counsel, *sua sponte*, to  
28 represent Petitioner in this habeas matter as described in this order, if Tom does not

1 timely object to the appointment.

2 It is further ordered that Petitioner has 30 days to file an objection to the Court's  
3 appointment of counsel to represent him in all federal proceedings related to this matter.

4 The Clerk of Court is further directed to serve a copy of this order on Tom at  
5 Lovelock Correctional Center.

6 The Clerk of Court is further directed to add Nevada Attorney General Aaron D.  
7 Ford as counsel for Respondents and to provide Respondents an electronic copy of all  
8 items previously filed in this case by regenerating the notice of electronic filing to the  
9 Nevada Attorney General's office only. The Court will issue an order setting a briefing  
10 schedule following the deadline for Tom to file an objection to the appointment of counsel.  
11 If counsel is appointed, the Court will set a deadline for the filing of an amended petition  
12 and/or seeking other relief after counsel has entered an appearance. The Court  
13 anticipates the deadline for filing an amended petition will be 90 days after entry of the  
14 formal order of appointment.

15 DATED THIS 5<sup>th</sup> Day of December 2024.



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17 MIRANDA M. DU  
18 UNITED STATES DISTRICT JUDGE  
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